

The Order of the Court is stated below:

Dated: December 21, 2025 /s/ MARIAN ITO
06:19:27 PM District Court Commissioner



Dated: December 29, 2025
02:11:55 PM

/s/ DEREK P PULLAN
District Court Judge



FILED
UTAH APPELLATE COURTS

FEB 18 2026

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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH, PROVO DEPARTMENT

In the matter of the marriage of:

LAUREN R MARSH,

and

KIRK RUSSEL MARSH.

ORDER ON HEARING
(NOVEMBER 12, 2025)

Civil No.: 254402167

Commissioner: Ito

Judge: Pullan

A hearing was held in person on November 12, 2025 before the Honorable Commissioner Ito regarding Lauren Marsh Zimmer's *Amended Motion to Enforce Order and for Sanctions* and Kirk Russel Marsh's *Counter Motion to Motion to Enforce Order and for Sanctions*. Petitioner, Lauren Zimmer (fka Lauren Marsh), was present and represented by counsel, Kristy Hanson. Respondent, Kirk Russel Marsh, was present, and represented himself. Having heard oral argument and proffers, reviewed pleadings, and for good cause appearing, the Court orders as follows:

1. The Court finds that the elements of contempt are that (1) there is a court order and that the party knew of the order, (2) the party had the ability to comply with the order, and (3) the party willfully failed to do so. This has to be demonstrated by clear and convincing evidence.

2. The Court clarifies that they cannot establish new orders today and can only enforce an order signed by a judge. Orders made by a judge remain in effect, even if there is a pending petition to modify. Pursuant to UCRP 106, an order remains in effect during the pendency of a petition to modify. Filing a petition to modify does not stay the obligation to pay child support.

Child Support

3. The Court finds Father in contempt on the issue of child support.

4. The order of the Court requires Father to pay \$700 a month in child support. Father knew of the order of the Court and has willfully failed to comply. This has been demonstrated by clear and convincing evidence.

5. Father has alleged that he is getting a higher education degree right now. The Utah Appellate Court case Mancil v. Smith, 18 P.3d

509 holds that a child's right to ongoing support should not be held hostage to a parent's desire to get a higher education, even if the parent's degree will eventually allow the parent to pay support at a higher level.

6. Zeros are not acceptable. Paying zero is never acceptable. The circumstances that would need to exist for something like that to actually be acceptable for zeros to be acceptable aren't present here in this case. If you can go to school to get a PhD, you can have a job and earn money to support your kids. They are not mutually exclusive. The Court is not persuaded by the notion that Father lacks the ability to comply.

7. The Court is also not finding that Father has met the requirements under *Kessimakis v. Kessimakis*, which says that before you can say you lack the ability to comply you have to allege due diligence. The Court does not find that zeros demonstrate due diligence.

8. The lack of payments since December 2023 is after Father's release from incarceration. Mother is not requesting a finding of contempt for not paying child support while incarcerated.

Insurance Premiums and Medical Expenses

9. The Court finds by clear and convincing evidence that Father is found in contempt on the issues of insurance premiums and medical expenses.

Communication

10. The Court does not find contempt on the issue of communication, but the Court does introduce the following supplemental orders:

11. Both parties are to read BIFF for CoParent Communication: Your Guide to Difficult Texts, Emails, and Social Media Posts by Bill Eddy, Annette Burns, and Kevin Chafin.

12. The Court directs that the parties will utilize Our Family Wizard for communication and the tracking of expenses.

13. Each party will pay their own cost associated with Our Family Wizard. If the parties can agree on a different app, they can use that app, otherwise it will be Our Family Wizard.

14. The Court requires a response to an inquiry or email within 48 hours, even if it doesn't necessarily contain a question.

15. The Court does not require therapy, but reserves that as potentially required in the future.

Instagram Account

16. The Court finds Father in contempt as it relates to the Instagram account and posts. The Instagram account needs to be removed and the letters need to be taken down. The Court emphasizes that truth is not necessarily a defense to contempt. You can believe that something is true, but sharing it with your kids can still be a contemptuous act. The Court directs Father to make every effort to take the account down. Father may purge his contempt by removing the account.

Attorney's Fees

17. The Court finds that Mother substantially prevailed and awards her attorney's fees.

Post-judgment Interest

18. The Court awards post judgment interest on all amounts owing at the post-judgment interest rate of January 1, 2024, plus 2% pursuant to U.C.A. §15-1-4(3)(a), which is 6.81% interest on all arrears.

Judgment Amounts

19. The Court awards Mother a judgment in the following amounts:

- a. A judgment for \$15,400 for past due child support from

January 2024 through October 2025.

b. A judgment for \$2,800 for one-half of the costs of medical and dental insurance from January 2024 through October 2025.

c. A judgment for \$5,287.13 for one-half of all medical costs to be shared between the parties from December 2023 through September 2025.

20. The Court directs that Father may purge his contempt by paying his ongoing support obligation each month plus something towards arrears each month. The amount towards arrears needs to be a good faith amount. The Court will determine good faith when the matter comes before the Court again. The Court does not place a number towards the arrears that need to be paid each month as it will be based off of future circumstances.

Father's Countermotion to Enforce

21. The Court declines to stay the proceedings pending resolution of the *Petition to Modify*. The order or judgment remains in effect while the petition is pending. Frankly, it is not in the children's best interest for parties to be able to say "I don't want to pay child support for the next year and a half" because that can be

how long it takes to resolve the petition to modify, or even longer.

22. The Court does not find that Mother's motions violated Utah enforcement protocols.

23. The Court does not award Father his attorney's fees for two reasons: (1) Father did not prevail; and (2) Father did not use an attorney. The Court does not award attorney's fees to people who don't have attorneys.

**THIS DOCUMENT SHALL BE IN EFFECT IF/WHEN
THE COURT STAMP IS AFFIXED ABOVE**

Approved as to form:

KIRK RUSSEL MARSH
Respondent

NOTICE OF INTENT TO SUBMIT ORDER FOR SIGNATURE

PLEASE TAKE NOTICE that the undersigned, attorney for Lauren Zimmer, will submit the above *Order on Hearing (November 12, 2025)* to the Fourth District Court for signature, upon the expiration of seven (7) days from the date of this Notice unless written objection is filed prior to that time, pursuant to Rule 7(j)(4) of the Utah Rules of Civil Procedure.

DATED this 20th day of November, 2025.

/S/ Kristy L.
Hanson _____
KRISTY L. HANSON

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MacArthur, Heder & Metler, PLLC, 4844 North 300 West, Provo, Utah 84604, and that in said capacity and pursuant to Rule 5(b), Utah Rules of Civil Procedure, a true and correct copy of the foregoing *Order on Hearing (November 12, 2025)* was served upon the following on this 20th day of November, 2025:

PARTY	METHOD OF SERVICE
Kirk Russel Marsh kirkrussel@gmail.com <i>Respondent</i>	☐ Hand-delivered ☐ U.S. Mail ☐ Fax ☒ E-Mail ☐ Utah Court Electronic Filing System

/s/ Mickala Mahaffey _____

Kirk Russel Marsh

Name

10036 Glenmere Rd

Address

Fairfax VA 22032

City, State, Zip

(571) 430-9473

Phone

kirkussel@gmail.com

Email

This motion requires you to respond. Please see the Notice to Responding Party.

Check your email. You will receive information and documents at this email address.

I am ☐ Petitioner ☒ Respondent
☐ Petitioner's Attorney ☐ Respondent's Attorney (Utah Bar #: _____)
☐ Petitioner's Licensed Paralegal Practitioner
☐ Respondent's Licensed Paralegal Practitioner (Utah Bar #: _____)

In the District Court of Utah

Fourth Judicial District Utah County

Court Address 137 N Freedom Blvd Provo UT 84601

In the Matter of (select one)

- ☒ the Marriage of (for a divorce with or without children, annulment, separate maintenance, or temporary separation case)
☐ the Children of (to establish custody, parent-time or child support)
☐ the Parentage of the Children of (for a paternity case)

Lauren R Marsh

(name of Petitioner)

and

Kirk Russel Marsh

(name of Respondent)

Other parties (if any)

Motion to Set Aside

☐ **Default**

(Utah Rule of Civil Procedure 55(c))

☒ **Judgment**

(Utah Rule of Civil Procedure 60(b))

☒ **Hearing Requested**

254402167

Case Number

Pullan

Judge

Ito

Commissioner

☐ Plaintiff/Petitioner ☒ Defendant/Respondent asks the court to set aside the
☐ default ☐ judgment entered against them on November 12, 2025 (date).

1. I ask to set aside the default or judgment for the reasons below (Choose all that apply.):

a. ☒ Because of my mistake, surprise, excusable neglect, or inadvertence. (Describe.):

See attached

b. ☐ I have learned of new evidence that I could not have discovered within 28 days after the judgment was entered. (Describe.):

c. ☐ Because of the other party's fraud, misrepresentation or other misconduct. (Describe.):

d. ☐ The judgment is void. (Describe.):

e. ☐ The judgment has been paid, released, or discharged. (Describe.):

f. ☐ The judgment in my case is based on an earlier judgment. That earlier judgment has been reversed or otherwise vacated. (Describe.):

g. ☒ It is no longer equitable that the judgment should have prospective application. (Describe.):

See attached

h. ☒ Some other reason that justifies relief. (Describe.):

See attached

2. This motion is being filed within a reasonable time because (Choose all that apply.):

☒ I selected 1a, 1b, or 1c, and I am making this motion within 90 days of the default or judgment.

☐ I selected 1d, 1e, 1f, 1g, or 1h. (Explain why you are filing this motion now and how that is reasonable.):

3. The reasons that I disagree with the claims in the original complaint or petition, and the facts supporting my disagreement, are:

See attached

4. ☒ I request a hearing.

☐ I do not request a hearing.

Plaintiff/Petitioner or Defendant/Respondent

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at Provo, Utah (city, and state or country).

December 3, 2025

Date

Signature ► /s/ Kirk Russel Marsh

Printed Name Kirk Russel Marsh

Notice to responding party

You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

- within 14 days of this motion being filed, if the motion will be decided by a judge, or
- at least 14 days before the hearing, if the motion will be decided by a commissioner.

In some situations a statute or court order may specify a different deadline.

If you do not respond to this motion or attend the hearing, the person who filed the motion may get what they requested.

See the court's Motions page for more information about the motions process, deadlines and forms: utcourts.gov/motions



Scan QR code to visit page

Finding help

The court's Finding Legal Help web page (utcourts.gov/help) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.



Scan QR code to visit page

Aviso para la parte que responde

Su tiempo para responder a esta moción es limitado. En la mayoría de casos deberá presentar una respuesta escrita con el tribunal y darle una copia de la misma a la otra parte:

- dentro de 14 días del día que se presenta la moción, si la misma será resuelta por un juez, o
- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

En algunos casos debido a un estatuto o a una orden de un juez la fecha límite podrá ser distinta.

Si usted no responde a esta moción ni se presenta a la audiencia, la persona que presentó la moción podría recibir lo que pidió.

Vea la página del tribunal sobre Mociones para encontrar más información sobre el proceso de las mociones, las fechas límites y los formularios: utcourts.gov/motions-span



Para acceder esta página escanee el código QR

Cómo encontrar ayuda legal

La página de la internet del tribunal Cómo encontrar ayuda legal (utcourts.gov/help-span) tiene información sobre algunas maneras de encontrar ayuda legal, incluyendo el Centro de Ayuda de los Tribunales de Utah, abogados que ofrecen descuentos u ofrecen ayuda legal limitada, y talleres legales gratuitos.



Para acceder esta página escanee el código QR

Certificate of Service

I certify that I filed with the court and am serving a copy of this Motion to Set Aside Default or Judgment on the following people.

Person's Name	Service Method	Service Address	Service Date
Kristy Hanson for Lauren Zimmer	☐ Mail ☐ Hand Delivery ☒ E-filed ☒ Email ☐ Left at business (With person in charge or in receptacle for deliveries.) ☐ Left at home (With person of suitable age and discretion residing there.)	MyCase Email: kristy@mhmlawoffice.com	December 3, 2025
	☐ Mail ☐ Hand Delivery ☐ E-filed ☐ Email ☐ Left at business (With person in charge or in receptacle for deliveries.) ☐ Left at home (With person of suitable age and discretion residing there.)		
	☐ Mail ☐ Hand Delivery ☐ E-filed ☐ Email ☐ Left at business (With person in charge or in receptacle for deliveries.) ☐ Left at home (With person of suitable age and discretion residing there.)		

December 3, 2025

Date

Signature ► /s/ Kirk Russel Marsh

Printed Name Kirk Russel Marsh

Motion to Set Aside Commissioner's Recommendation and Extend Time to Object (Rule 60(b))

GROUND FOR RELIEF: EXCUSABLE NEGLIGENCE (Rule 60(b)(1))

1. **Reasonable Misunderstanding of the Deadline Start Date:** Respondent, acting *pro se*, mistakenly believed that the 14-day period to object to the Commissioner's recommendations under URCP 108 commenced upon the service of the formal written Findings and Order, rather than the date of the verbal recommendation in court. Respondent was awaiting proper service of the proposed written orders to ensure he was objecting to the specific language of the Court's ruling. Respondent received written Orders on November 20, putting his perceived deadline on December 4. This was an honest misunderstanding of the procedural nuance between a verbal recommendation and a written order.
2. **Good Faith Attempt to Object Timely:** Respondent demonstrated diligence and an intent to follow deadlines and preserve his rights by timely filing an *Objection to Proposed Judgment for Award of Attorney's Fees* on December 1, 2025. Respondent has made a good faith effort to respond timely as within his knowledge and understanding. Respondent did not intend to waive his objection to the contempt; rather, his objection to the attorney fees shows good faith effort to obey all deadlines.
3. **Minimal Delay and Lack of Prejudice:** The delay in seeking to file the full objection is minimal. The deadline expired on or around November 26, 2025, and Respondent files this objection on December 3, 2025—a delay of only seven days. Granting this motion will not prejudice the Petitioner, as the case is currently still active regarding the reasonableness of attorney fees, and no final judgment has been executed.
4. **Meritorious Defense (Manifest Injustice):** Rule 60(b) relief is appropriate where the movant has a meritorious defense. Here, allowing the order to stand without review would result in manifest injustice. As detailed in the attached *Objection to Commissioner's Recommendations*, the Commissioner's order imposes incarceration and financial sanctions without the evidentiary hearing required by the Due Process Clause and *Turner v. Rogers*. Furthermore, the order requires Respondent to perform an

impossible act (deleting a social media account he does not own). Respondent deserves the opportunity to have these serious constitutional defects reviewed on their merits.

- 5. Liberal Construction of Pro Se Filings** Utah courts are required to construe pro se filings liberally. Respondent's December 1st filing challenged the substance of the attorney-fee award, the findings of ability to pay, and the due-process sufficiency of the Commissioner's ruling, even if captioned as an objection to the fee judgment. The Court must look to the substance and intent of pro se filings rather than their technical form.

Respondent respectfully requests that the Court extend the time to file objections to the Commissioner's ruling and accept the attached objections as timely filed.

/s/ Kirk Russel Marsh

Kirk Russel Marsh, pro se

December 3, 2025

Attached: Exhibit A - Objection to Orders on Hearing

Exhibit B - Objection to Attorney's Fees

EXHIBIT A

OBJECTION TO COMMISSIONER'S RECOMMENDATION

Respondent, Kirk Russel Marsh, respectfully submits this *Objection to The Orders on Hearing* filed November 20, 2025, pursuant to Utah Rule of Civil Procedure 108. Respondent files this objection within the fourteen-day period permitted by Utah R. Civ. P. 108, and this objection is therefore timely and properly before the Court.

I. Child Support

In her *VERIFIED REPLY TO KIRK RUSSEL MARSH* dated November 5, 2025, Petitioner cites *Utah Farm Prod. Credit Ass'n v. Labrum*, 762 P.2d 1070, 1074 (Utah 1988) and *Kessimakis v. Kessimakis*, 580 P.2d 1090, 1092 (1978) as controlling case law. It is pursuant to *Labrum* and *Kissimakis* that Respondent argued in the hearing on November 12, 2025, and files this *Objection*.

Labrum explicitly states “The Supreme Court of Utah's review of a contempt citation involves two questions: first, whether the underlying order is lawful; and second, whether the party's conduct in violating the order constitutes contempt of court. *Mellor*, 597 P.2d at 884. To be held in contempt, a party must have (1) known of the duty imposed by the court's order, (2) had the ability to comply with the order, and (3) willfully and knowingly refused to comply.”

Both Petitioner and the Court conflated the *validity* of the order with the order *being in effect*. When Respondent attempted to address this, the Court did not allow the line of argument as to whether the order is lawful, finding “I don’t get to say the judge got it wrong. That’s not my job.” The Commissioner ignored the first prong of the Utah Supreme Court’s contempt standard, namely the requirement to assess the lawfulness of the underlying order. See *Labrum*, 762 P.2d at 1074; *Mellor*, 597 P.2d at 884.

Petitioner cited *Kessimakis*, with the Court citing *Kessimakis*, finding Respondent did not exercise due diligence because he paid 0 (*Orders* point 7). *Kessimakis*, like *Labrum* and *Mellor*, requires a two prong test to find contempt: (1) It requires the order to be lawful; (2) It defines “due diligence” as:

- attempts to pay
- attempts to modify
- attempts to comply

And Respondent DID exercise diligence:

- Petition to Modify was filed in March 2024 *and* February 2025
- He informed Lauren of inability well before her *Motion to Enforce*
- He explained his financial condition to both Lauren and the Court
- He provided notice of inability in his filings
- He raised the parental obligation shift in Court

The Court applied *Kissimakis* in this way: Russel didn’t pay anything, therefore no due diligence, therefore contempt. But this logic presumes:

- that payment was possible
- that the order was lawful
- that the imputation reflected ability to earn
- that failure to work was voluntary
- that the order was unambiguous

None of which were actually examined.

Furthermore, the obligation to make findings of ability to pay before imposing financial penalties is consistent with *Turner v. Rogers*, 564 U.S. 431 (2011), which held that due process requires ensuring that a party facing civil contempt sanctions has the actual present ability to comply. Entering a fee judgment without those findings creates constitutional infirmity and violates the core due-process requirement of assessing actual financial capacity before imposing punitive financial burdens. Respondent asserts on the record that he presently and historically lacks the financial ability to comply with any such order.

II. Insurance Premiums and Medical Expenses

Respondent objects to the Court's finding of contempt on the issues of insurance premiums and medical expenses. The finding is procedurally and constitutionally defective because it was entered without an evidentiary hearing and without a determination of Respondent's present ability to pay — and despite a clear and substantial factual dispute over the amounts allegedly owed.

A Good-Faith Factual Dispute Exists: A finding of contempt requires, at minimum, that the amount of arrears be an established fact. The allegations were not litigated in Court, and the charges are not verified. In reviewing Petitioner's exhibits, Respondent identified significant contradictions and historical charges, including a historical overcharge by Petitioner of \$135/month for medical insurance premiums. These unresolved discrepancies mean the Petitioner's current arrears allegations are unverified. A ruling on sanctions must be "grounded in established facts about the violations," which is impossible when the alleged "facts" are in dispute (*Kilpatrick v. Bullough Abatement*, 2014 UT App 223).

Denial of a Required Evidentiary Hearing: Despite the clear factual dispute, Respondent was denied the basic procedural mechanism for resolution. Respondent explicitly requested an

evidentiary hearing in his *Countermotion*, stating that due process required it prior to charging of contempt — especially given the risk of incarceration. The Court denied Respondent’s request for an Evidentiary Hearing. Without an evidentiary hearing, Petitioner’s allegations remained untested, unverified, and unproven. Contempt requires clear and convincing evidence of a willful violation of a lawful order. That burden was not met. The Court relied solely on Petitioner’s assertions of arrears, with the “clear and convincing” standard cited in name only — not satisfied in fact.

Violation of the Due Process Clause: Proceeding to a contempt finding — with incarceration contemplated as a remedy — without resolving the amount of debt and Respondent’s present ability to pay is a direct violation of the Due Process Clause of the Fourteenth Amendment. In *Turner v. Rogers* (564 U.S. 431), The Supreme Court vacated a contempt order jailing a father for unpaid child support precisely because the trial court failed to determine his actual financial capacity and the veracity of the claims. Here, the Commissioner’s recommendation fails both prongs of Turner:

- i. The amount of arrears was disputed and unverified, and
- ii. The Court never determined Respondent’s actual present ability to pay.

Proceeding under these circumstances undermines constitutional due process and renders the contempt finding invalid.

III. Communication

Respondent objects to the Commissioner’s supplemental orders regarding communication. The recommendation is defective for the following reasons:

No Finding of Contempt The Court did not find Respondent in contempt for communication.

Without a contempt finding, the Commissioner lacked authority to impose punitive or coercive measures against Respondent's communication practices. The absence of a contempt finding is fatal to any coercive directive because contempt powers are derivative — not inherent — and must be predicated on specific findings.

Acknowledgment of Limited Authority: The proposed *Order on Hearing* states “The Court clarifies that they cannot establish new orders today and can only enforce an order signed by a judge” (see *Order on Hearing* point 2). Despite this acknowledgment, the Court nevertheless issued supplemental orders that altered the parties' communication obligations (see *Order on Hearing* points 11-15). These orders constitute modifications of the parenting plan and communication orders, which exceed the Commissioner's stated authority (see *Order*; point 2). It is axiomatic that a court cannot disclaim authority and then exercise it.

Sanctions Disguised as Modifications The Commissioner stated “I am wearing today my enforcement hat. I am not wearing a modification hat. I'm not establishing new orders today. I am enforcing orders signed by a judge.” If the Commissioner's “supplemental orders” were not modifications, they operated as sanctions. Sanctions require a finding of contempt or other lawful basis, which was absent here. Issuing sanctions without a contempt finding violates due process and exceeds the Commissioner's stated statutory authority. Regardless of how the directives were labeled, the effect of those directives was coercive and punitive in nature, thereby meeting the functional definition of sanctions.

Ambiguity and Enforcement Problems: The Commissioner's directives blur the line between modification and sanction, leaving Respondent uncertain whether he is bound by new obligations

or punished for past conduct. The Court was inconsistent upon these points, as she granted some of the Petitioner's requested sanctions, but denied others as modifications: The Court used language such as

"I am going to grant that Our Family Wizard for communication as well as tracking the expenses... I am not going to grant (Petitioner's) authority to make a decision if he doesn't respond because there is a process set forth in the decree, and if I were to do what she's asking, it would constitute a modification of the decree."

The inconsistency of granting some sanctions as "supplemental orders" not justified as sanctions, while denying others as modifications, reflects an internally inconsistent judicial posture. Such ambiguity renders the orders unenforceable and deprives Respondent of due process. Due process requires notice of the specific conduct that is required or prohibited. Where the orders lack clarity, compliance cannot be compelled.

IV. Instagram Account

Respondent objects to the Commissioner's finding of contempt and the order requiring removal of an Instagram account content. The recommendation is procedurally, evidentially, and constitutionally defective and must be vacated:

Failure of Proof as to Account Ownership and Control/ Burden of Proof and Ability to Perform:

Petitioner is required to prove by clear and convincing evidence that Respondent (1) operated the account, (2) controlled its content, and (3) possessed the ability to delete it. Respondent repeatedly stated the account is not his, that he does not control it, and lacks ability to remove posts. Pursuant to *Von Hake v. Thomas* (759 P.2d 1162 Utah 1988), a party may not be held in

contempt for failure to perform an act which is impossible. Rather than evidence, Petitioner offered the Court opinions and speculative concerns. The burden of ownership proof does not lie with Respondent. Respondent provided Petitioner with a method to contact the account owner directly; Petitioner declined to exercise due diligence. Respondent cannot be legally required to force or coerce a private individual to censor their speech.

No finding of violation of the parenting plan: There are no findings that Respondent spoke of the divorce to the children, or allowed a third party to do so in front of the children. There are no findings that the children saw the Instagram account, or were coerced, influenced, or harmed by the Instagram account. There are no findings that the letters contained in the account spoke of the divorce, about the divorce, who filed for the divorce, or that the letters harassed or belittled the Petitioner. There are no findings that Respondent knew of an existing court order, had the ability to comply with the order, and willfully failed to do so. The only finding was that Respondent “was in violation concerning the Instagram account” which is legally insufficient.

Protected Expressive Content: The Court punished Respondent for the *content of speech*, not for violation of an order. The Instagram posts contained expressions of repentance, forgiveness, reflections on prison life, shock over the divorce, pleas to cooperate for the children’s benefit, and respect for Petitioner. Such expressive speech is protected under the First Amendment. Neither Petitioner’s filings nor the Commissioner’s order identified false, defamatory, or harmful content. The finding that “truth is not necessarily a defense to contempt” is a misstatement of law. Truth is an absolute defense to reputational harm under defamation law, and truthful,

non-harassing speech cannot be suppressed absent a compelling state interest, however no evidence shows the children were exposed or harmed, or would be harmed if exposed.

Speculative Harm, Not Clear and Convincing Evidence: The presented evidence rested solely on the speculative possibility that the children could theoretically access the account. The standard for contempt is actual and demonstrable harm, not conjectural concern.

Retroactivity - Finding Contempt Despite No Prior Order: Contempt requires violation of a prior lawful order (*see Labrum*). Prior to the *Motion to Enforce* hearing, no order prohibited Instagram use, or autobiographical public social media posts. The Court effectively modified the parenting plan – creating a new restriction during the hearing – then punished Respondent for a third party’s prior conduct under a newly minted order. The Commissioner improperly elevated Petitioner’s subjective views into binding law without evidentiary foundation, despite Respondent’s requests for an evidentiary hearing and pleas for the Court to read the letters. By simultaneously modifying the orders and holding Respondent in contempt, the Commissioner collapsed two distinct judicial functions, depriving Respondent of due process.

Ambiguity of Instagram Purge Conditions: The purge conditions are unenforceable because they are ambiguous, impossible, and independently unconstitutional.

Scope: The order required removal of the entire Instagram account, but did not specify whether Respondent is prohibited from maintaining any Instagram presence, or whether the restriction extends to other platforms such as LinkedIn, Facebook, or X. It is unclear whether the order is directed at Respondent personally, or at the third-party account owner.

Due Process Requirement of Specificity: Here, the order fails to identify the precise account, the specific posts, or the scope of prohibited activity.

Inability to Comply: Purge conditions requiring removal of an entire third party account are impossible for Respondent to perform. The Commissioner failed to make a finding that Respondent had current login access, recovery email access, password resets, or administrative privileges for the account.

Ambiguity and Expanded First Amendment Violation in Purge Conditions: Removal of content constitutes direct censorship. Removal of the account itself goes further, amounting to denial of access to entire forums of lawful speech.

Conclusions: Contempt is not a vehicle for policing dignity, optics, or emotional discomfort. It is a narrowly-cabined enforcement mechanism for lawful orders, not a discretionary tool to restrict personal narrative or autobiographical expression.

V. Attorney's Fees

A comprehensive objection to the award of Attorney's fees has been filed separately as *Objection to Proposed Attorney's Fees*; for brevity here, attorney's fees cannot be ordered when there is no underlying valid contempt charge.

Additionally, saddling Respondent with a debt he is unable to pay is a violation of his due process rights under *Turner*.

VI. Post-Judgment Interest

Because the alleged arrears are actively disputed and have never been adjudicated through an evidentiary process, there is no qualifying "judgment" under Utah Code § 15-1-4. Post-judgment interest cannot be imposed where there is no final judgment establishing arrears.

Accordingly, the award of 6.81% interest is premature, unsupported by findings, and must be vacated.

Interest may only attach to fixed, established, and adjudicated amounts — not to alleged arrears or unverified claims. Until the true arrears amount is determined through evidentiary hearing, §15-1-4 does not apply.

Imposing statutory interest on contested arrears without findings of fact or present ability to pay violates the due process protections outlined in *Turner v. Rogers*, 564 U.S. 431 (2011). A court cannot impose interest before adjudicating the underlying debt.

VII. Judgment Amounts

Respondent objects to the finding of Judgment Amounts because due process was not followed in the determination of contempt, arrears, or fees. The judgment amounts were adopted solely from Petitioner's assertions. They were never litigated: Respondent was denied an evidentiary hearing, denied the opportunity to question or cross-examine Petitioner, denied the opportunity to dispute the calculations, and denied the opportunity to fully brief the constitutional issues at stake.

Lack of Objective Purge Conditions: The Commissioner's proposed purge requirement — phrased as "full payment and a demonstrated good-faith effort toward arrears" — is subjective and indeterminate. The Commissioner further indicated that the adequacy of Respondent's effort would be determined at a later date when the matter comes before the Court. This illustrates the Court's lack of findings on Respondent's present and future ability to earn income, his current inability to pay, and illustrates the dangers of the unlawful order of \$700/month base child support plus expenses when the obliger is not imputed income nor found in ability to earn income.

The ambiguous purge conditions, based upon “future circumstances” creates a moving target. A person cannot be held in contempt based upon a standard that will only be defined prospectively.

Respondent’s actual present ability to comply has never been determined. Respondent has not been imputed income, and the Court has made no finding as to his current financial capacity. This constitutes a violation of *Turner v. Rogers*, 564 U.S. 431 (2011), which requires that courts assess ability to pay before imposing coercive sanctions.

Procedural Defect: Ambiguous and Unattainable Order: Imposing an undefined standard of “good faith” compliance — without quantifying obligation, timeline, or method — creates an order that is ambiguous and unobtainable. As courts nationally have recognized:

- Purge conditions must be explicit
- Compliance must be objectively measurable
- The contemnor must be able to determine whether compliance has been achieved

Here, Respondent cannot do so. Without a clear and attainable purge condition, the contempt order cannot function as civil contempt.

Punitive Character of the Sanction: A valid civil contempt order must be accompanied by precise purge conditions such that Respondent “holds the keys to the cell.” The indefinite and subjective standard applied here — one in which the Commissioner retains discretion to later decide whether Respondent’s efforts were “good faith” — transforms the sanction into punitive contempt, not coercive civil contempt.

Punitive contempt cannot be imposed absent full criminal protections, including formal notice, right to counsel, right to examine evidence, and proof beyond a reasonable doubt. None of these protections were afforded.

VIII. Father's Countermotion to Enforce

Respondent objects to the Court's dismissal of his *Countermotion*. The Court dismissed his procedural and constitutional arguments, leaving him no venue in which to seek redress before improper sanction, ordered punitive fees and sanctions with no legal justification, and misstated modification standards. The *Countermotion* requested:

- Deny Lauren's *Motion to Enforce and for Sanctions*; alternatively,
- Stay enforcement proceedings pending resolution of Russel's *Petition to Modify Child Support*; or
- Set the matter for an Evidentiary Hearing to determine factual and financial capacity; and
- Find that Lauren's *Motion* was filed in violation of Utah enforcement protocols and in bad faith; and
- Award Russel attorney fees previously incurred in responding to Lauren's *Motion*.

IX. Relief Requested

Respondent respectfully asks the Court:

- Strike the Commissioner's Recommendations regarding *Petitioner's Motion to Enforce*; and
- Order a hearing to assess the lawfulness of the controlling orders; and

- Stay any enforcement of the controlling orders pending the assessment of lawfulness of controlling orders;
- Upon findings of lawfulness of controlling orders, modify orders to reflect lawful application of law and statute as needed;
- Re-evaluate enforcement action after following the required procedures for due process

X. CONCLUSION

Finding Respondent in contempt without findings due process would be reversible error. Because the proposed judgment lacks assessment of the lawfulness of the order, lacks statutory findings, is punitive in nature, and ignores Respondent's ability to comply, it cannot be entered. Respondent preserves all appellate rights related to any actions in this matter.

/s/ Kirk Russel Marsh

Kirk Russel Marsh, pro se

December 3, 2025

EXHIBIT B

OBJECTION TO PROPOSED JUDGMENT FOR AWARD OF ATTORNEY'S FEES

Civil No.: 254402167 Judge: Pullan Commissioner: Ito

Respondent, Kirk Russel Marsh, respectfully submits this objection to the proposed Judgment for Award of Attorney's Fees filed November 24, 2025, pursuant to Utah Rule of Civil Procedure 73(d).

On November 24, 2025, Petitioner filed a proposed Judgment for Award of Attorney's Fees seeking \$24,779 in fees. This request was supported by the Declaration of Attorney's Fees filed the same day.

Respondent files this objection within the seven-day period permitted by Utah R. Civ. P. 73(d), and this objection is therefore timely and properly before the Court.

FEES ARE EXCESSIVE AND NOT REASONABLY RELATED TO THE ISSUES

In *Stubbs v. Hemmert*, the Court ruled that a party is therefore entitled only to those fees resulting from its principal cause of action for which there is a statutory obligation for attorney's fees. In this case, it seems attorney fees were ordered under Utah Code § 81-1-203(2), which permits a fee award upon determining that a party “substantially prevailed.”

In *Dahl v. Dahl*, 2015 UT 79, the Utah Supreme Court denied attorney fees, finding unreasonableness of a fee request where the plaintiff “opted to start over with new counsel,” which did not “advance the litigation” and resulted in “unreasonably large” attorney fees. The Court held such fees were not compensable. The same applies here.

Dahl v. Dahl also found fees must be reasonable, necessary, isolated to the current action, and non-duplicative. Petitioner started over with new counsel, which engaged in duplicative and inefficient billing practices—multiple attorneys revising the same filings, repeated charges for binder preparation, and clerical communications billed as attorney work. The requested fees are

not isolated to the current action. These entries did not advance the litigation and created unreasonably large fees, which cannot qualify for an award under Utah law. The billing records (Exhibit 1, *Petitioner's Declaration of Attorney's Fees*) show the inefficiency and duplication:

- September 25, 2025: KH, as new counsel for Petitioner, billed \$525 for a three way call with Petitioner's previous counsel as well as Melanie Cook, new co-counsel.
- Dec. 12, 2024: Both KH and MM billed for revising the same *Motion to Enforce*.
- September 25 to December 17, 2025: From taking Petitioner's case, to filing the *Motion to Enforce*, counsel billed Petitioner \$5,180.
- Petitioner's counsel states "Our office had to comb through years of records related to daycare costs..." Daycare costs were last accrued in 2020. The Court's findings ruled that this enforcement action does not litigate action before January 2024.
- Mar. 10, 2025: KH billed 1.5 hours (\$525) and MM billed 2.4 hours (\$480) for overlapping review and revisions of the same reply and binder preparation.
- Additional charges for binder preparation: March 10 (\$200), March 11 (\$120), March 12 (\$45), (\$60), November 10 (\$345)
- Mar. 11, 2025: KH billed 2.0 hours (\$700) for a client call and file review, while RPenc billed separately for exhibit binder preparation.
- Numerous entries reflect internal staff meetings and clerical communications (e.g., MF emails to court clerks billed at \$10–\$40).
- There is no distinction between hours billed in this action vs. the filings of other motions, counter motions and responses.

These patterns are classic examples of non-compensable duplication and internal firm overhead, not fees reasonably necessary to litigate the *Motion to Enforce*.

The Utah Supreme Court finds a party who fails to differentiate between recoverable and unrecoverable attorney fees may forfeit the award entirely. (*Utah Farm Prod. Credit Assoc.*, 627 P.2d at 66 (finding no abuse of discretion in trial court's refusal to award any attorney fees where party requesting fees failed to distinguish between time "spent prosecuting its complaint and the portion spent in defending the counterclaim"); *Selvage v. J.J. Johnson & Assoc.*, 910 P.2d 1252, 1266 n.15 (Utah Ct. App. 1996) (noting that "it may be proper to deny a request for attorney fees if the requesting party fails to allocate in accord with the directive of Cottonwood Mall"))).

Respondent cannot be required to subsidize firm-management inefficiency or duplicative billing.

RESPONDENT'S INABILITY TO PAY

Even if fees were otherwise recoverable, Respondent lacks the ability to pay a \$24,779 judgment. He was not imputed income under the controlling orders and has no assets or income, as established in testimony and prior filings, which the Petitioner does not dispute. Respondent is a full-time student, and the controlling orders expressly recognize that his earning capacity is uncertain and contingent. The Court previously found his ability to earn income to be ambiguous, not established, and not imputed for support purposes. No litigation was held regarding Respondent's current or historical financial circumstances or his present ability to comply with any fee-based judgment; rather, the Court modified orders, finding "If you can go to school to get a PhD, you can have a job and earn money to support your kids." Despite the finding, the Respondent does not have the current ability to pay.

Under §81-1-203(3), the court is encouraged to limit or deny fees when the payor is indigent. Respondent's status as indigent was neither addressed nor determined.

Furthermore, the obligation to make findings of ability to pay before imposing financial penalties is consistent with *Turner v. Rogers*, 564 U.S. 431 (2011), which held that due process requires ensuring that a party facing civil contempt sanctions has the actual present ability to comply. Although *Turner* arose in the context of child-support arrears, the same principle applies here: any attorney-fee award that may later be enforced through contempt or coercive sanctions must rest on findings of Respondent's present ability to pay. Entering a fee judgment without those findings risks constitutional infirmity in any future enforcement action and violates the core due-process requirement of assessing actual financial capacity before imposing punitive financial burdens. Respondent asserts on the record that he presently lacks the financial ability to comply with any such fee order.

THIS IS A MODIFICATION MOTION LITIGATED AS ENFORCEMENT

Utah Code § 81-1-203(1) provides that the court may award fees “to enable the other party to prosecute or defend the action,” and subsection (3) authorizes courts to award *no* or *limited* fees if the payor is indigent or if the court enters a reason for not awarding fees.

The Judgment merely states that Petitioner “substantially prevailed,” implying reliance on § 81-1-203(2); while §81-1-203(2) allows a fee award in enforcement actions based on “substantially prevailed,” the characterization of the underlying motion is dispositive. The Court's ruling was not a pure enforcement action — it sought to expand, reinterpret, and functionally modify the existing orders. The Court did not find Respondent in contempt concerning communication issues; however, it modified the decree by granting the sanctions requested by the petitioner through "supplemental orders." The Court also modified findings of Respondent's ability to pay to justify contempt. A hybrid or modification action triggers

§81-1-203(1); as held in *Wall v. Wall*, 2007 UT App 61, an award of attorney fees under subsection(1) must be based on evidence of:

- the receiving party's financial need,
- the payor party's ability to pay, and
- the reasonableness of the requested fees.

No such findings were made.

FEES WERE IMPROPERLY AWARDED AS A PUNITIVE MEASURE

Even if enforcement was the *only* matter litigated under these orders, 81-1-203 (3) must still be considered to avoid triggering further due process violations under *Turner v Rogers*. The Supreme Court found the trial court ““may” grant attorney no or limited fees but is not required to do so, so long as its decision thereon is reasonable and within its allotted authority” (*Levin v. Carlton*, 2009 UT App 170, ¶27, 213 P.3d 884); however, Respondent’s indigency makes impossible the ability to pay attorney fees as well as purge contempt for nonpayment. *Von Hake v. Thomas*, 759 P.2d 1162 (Utah 1988) (A party may not be held in contempt for failure to perform an act which is impossible.)¹

Further, the Declaration of Attorney’s Fees characterization of Respondent’s filings as “nonsensical,” “ridiculous,” and the product of “intentionally poor behavior” clearly demonstrates that the fee request is framed as punishment rather than based on legitimate need. Counsel states:

¹ As for contempt regarding Instagram, Respondent does not own nor control the Instagram account, and thus faces impossibility to comply. All contempt charges, which the court found as justification for the award of attorney’s fees, are based upon Respondent's ability to comply with impossible conditions.

“The amount which my firm has charged our client is, in my opinion, a reasonable amount given the circumstances and Father’s intentionally poor behavior throughout these proceedings.”

This language confirms that the request is framed as punishment for alleged behavior. As an illustration, counsel provided an inflated total amount which fails to differentiate between costs to bring forward this *Motion* and costs concerning other *Motions*, *Countermotions*, the retaining of new counsel, and administrative tasks.

As this declaration was framed as punishment, the only possible statutory basis would be § 78B-5-825, which requires express findings of bad faith—findings that are absent here. To date, no Court has found Respondent’s filings to be frivolous, meritless, or in bad faith, and the record contains no such determination.

NO FINDING OF BAD FAITH UNDER UTAH CODE § 78B-5-825

Had Petitioner's counsel’s purpose been to recover “this substantial amount of attorney fees incurred as a result of Father’s repeated violations of this Court’s orders over a period of several years,” she would request an evidentiary hearing under § 78B-5-825 – requiring a finding that filings were meritless and not brought in good faith. In the current action, no such finding was made. Had the Court intended to find bad faith, it was required to say so expressly and identify the specific filings that were frivolous; it did neither.

Disagreement with the Court or opposing counsel is not bad faith, and courts routinely rely on litigant-filed motions to clarify ambiguous orders. Respondent’s filings and arguments sought clarification of orders, and relied on the case law cited by Petitioner (regarding Utah Supreme Court precedent for contempt (*Utah Farm Prod. Credit Ass’n v. Labrum*, 762 P.2d 1070, 1074 (Utah 1988), citing The Supreme Court of Utah's review of a contempt citation

involves two questions: first, whether the underlying order is lawful; and second, whether the party's conduct in violating the order constitutes contempt of court)). Petitioner's counsel mischaracterized Respondent's legitimate filings and arguments of Supreme Court law as "ridiculous." Without the court's express bad-faith determination, § 78B-5-825 can not apply. Utah appellate courts do not permit inferring findings where none were entered on the record. Respondent further emphasizes that each of his filings was made in response to active litigation initiated by Petitioner, filed in good faith to clarify orders, preserve rights, and comply with procedural requirements. Respondent did not file "nonsensical and frivolous filings" as accused — he acted within his rights to defend himself and seek redress for Constitutional violations.

PRAYER FOR RELIEF

Respondent respectfully requests that the Court deny the proposed judgment in full, as necessitated under Utah Law:

1. Find that Petitioner forfeited entitlement to attorney fees by submitting unreasonable fee requests, and by submitting a proposed judgment unsupported by the factual findings;
2. Find that Respondent presently lacks the ability to pay the requested fees, based on lack of findings, as well the undisputed record of his student status, lack of imputed income, and absence of assets or earnings;
3. In the alternative only, should the Court decline to strike the award in full:
 - A. Exclude all fees identified as duplicative, clerical, administrative, or unrelated to the *Motion to Enforce*; and
 - B. Stay enforcement of any remaining reasonable award unless and until Petitioner demonstrates Respondent's actual present ability to comply and Petitioner's present

financial need, consistent with § 81-1-203(1), (3) and *Turner v. Rogers* due-process requirements.

CONCLUSION

An award of fees without findings of need, reasonableness, and ability to pay would be reversible error. Because the proposed judgment lacks statutory findings, is punitive in nature, includes excessive and duplicative billing, and ignores Petitioner's need and Respondent's inability to pay, it cannot be entered. Respondent preserves all appellate rights related to any attorney-fee determinations in this matter.

/s/ Kirk Russel Marsh

Kirk Russel Marsh, pro se

December 1, 2025